

THE HON'BLE MR JUSTICE V.ESWARAIAH

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WRIT PETITION NO : 13629 of 2005

26-10-2005

Between:

Mavalooru Ramanaiah S/o. Musthainaiah
Malviya NAgar Gudur II, Gudur Mandal Nellore District.

..... PETITIONER

AND

1 The Commissioner and Prohibition & Excise
A.P Hyderabad. And others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE V.ESWARAIAH

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WRIT PETITION NO : 13629 of 2005

ORDER:

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The petitioner seeks to issue a writ of Mandamus directing the respondents 1 to 4 not to issue IL 24 licence in favour of 5th respondent on the ground that the proposed wine shop of 5th respondent is situated within 100 meters of the residential locality, abutting Swarnandhra Bharathi Degree and Junior College

and Mahalakshmi Temple. Therefore, there is a prohibition under Rule 27 of A.P. Excise (Lease of Right of selling by shop and conditions of licences) Rules, 2005 (for short 'the Rules').

A counter has been filed by the 2nd respondent stating that the 1st and 4th respondents have confirmed the shop in question in favour of Sri Solleti Velugonda Swamy-auction purchaser in Gazette Sl.No.43 of Plot No.1, Malavya Nagar, Gudur Municipality with highest tender for an amount of Rs.9,16,016.16. Accordingly, the auction purchaser has furnished bank guarantee towards 2/3rd lease amount and also furnished counterpart agreement under Rule 22 of the Rules and thereby selected the shop in conformity with the Rules. The 3rd respondent-Station House Officer, Gudur and SDPEO, Gudur have measured the distance between the mid point of the shop in question to Swarna Andhra Bharathi College main gate and Mahalakshmi temple and certified that the shop premises is in accordance with Rule 27 of the Rules. Accordingly, licence in Form-A4 was granted in favour of Soleti Velugonda Swamy lease holder of M/s. Sri Venkateswara Wines, Malavya Nagar, for the year 2005-06 at D.No.1/573, Malavya Nagar, Gudur. Thus, it is clear that the licence of the shop was granted in favour of Solleti Velugonda Swamy-lease holder, but not in favour of Vayagandla Sudhakar, who is 5th respondent herein and therefore, 5th respondent is in no way connected with the shop in question. The shop in question is located on the main road, which is a commercial area. Therefore, the writ petition is not maintainable and liable to be dismissed.

Having regard to the facts and circumstances of the case and in view of the averments made in the counter, I am of the view that whether the shop in question is situated within the prohibited area or not, cannot be decided in the writ petition.

Accordingly, the writ petition is dismissed giving liberty to the petitioner to file a civil suit and establish that the shop in question is situated contrary to Rule 27 of the Rules. No costs.

26-10-2005

Mjl/*

A counter has been filed by the 2nd respondent stating that the 1st respondent 5th respondent-auction purchaser of the shop in question and the 4th respondent has notified in gazette at Sl.No.43 of Plot No.1, Malavya Nagar, Gudur Municipality for an amount of Rs.9,16,016.16. Accordingly, the auction purchaser has paid 1/3rd instalment lease amount and furnished Bank Guarantee towards 2/3rd lease amount and also furnished counterpart agreement under Rule 22 of the Rule and thereby selected the shop in conformity the Rules. It is also stated that licence was also granted in favour of the 5th respondent on 28-06-2005 in respect of the said shop. It is further stated that the shop was established at Door no.1/573 of Malavya Nagar, Gudur, which is in the main road and the area is a commercial area. The 3rd respondent-Station House Officer, Gudur and SDPEO, Gudur have measured the distance between mid point of M/s Sri Venkateswara Wines to Swarna Andhra Bharathi College main gate and Mahalakshmi temple and certified that the shop premises are in accordance with Rule 27 of the Rules. As per the report of the 3rd respondent-Station House Officer, licence has been issued.

In view of the aforesaid counter, I am of the view that whether the shop is situated within the prohibited area or not, cannot be decided in the writ petition.

Accordingly, the writ petition is dismissed giving liberty to the petitioner file a civil suit if he is so advised and establish that the said shop is situated contrary to Rule 27 of the Rules. No costs.

26-10-2005

Mjl/*